93-756

No. _____

Supreme Court, U.S.
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In the

Supreme Court of the United States

October Term, 1993

MISSION OAKS MOBILE HOME PARK, a California General Partnership,

Petitioner,

v.

CITY OF HOLLISTER; HOLLISTER CITY COUNCIL; and HOLLISTER MOBILEHOME RENT COMMISSION,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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70 pp

QUESTIONS PRESENTED FOR REVIEW

1. Should District Courts dismiss lawsuits under the *Younger v. Harris*, 401 U.S. 37 (1971), abstention doctrine, when the federal plaintiff initiated the state proceeding and filed the state proceeding first to meet the ripeness requirement under the Just Compensation Clause of the United States Constitution? *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-97 (1985).

2. Can the filing of an *England* reservation in state court before federal claims have been decided in that court preserve federal claims for litigation in federal District Court, when the state action was filed first pursuant to the ripeness requirement for claims under the Just Compensation Clause? *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964).

3. Should parties who allege that their property has been taken by the government without payment of just compensation be forced to choose between forfeiting their right to a federal forum for all their federal claims, including nontakings claims, or forfeiting their takings claim?

PARTIES TO THE PROCEEDING

The parties to this action in the United States Court of Appeals for the Ninth Circuit were Mission Oaks Mobile Home Park, the City of Hollister, the Hollister City Council, and the Hollister Mobilehome Rent Commission.

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OPINION BELOW

The decision of the United States Court of Appeals for the Ninth Circuit is reported at 989 F.2d 359 (9th Cir. 1993), and is reproduced as Appendix A (App.). Page references are to the version in the appendix.

JURISDICTION

The decision of the Ninth Circuit was entered March 30, 1993. Petitioner filed a timely petition for rehearing, and rehearing was denied on August 13, 1993. Appendix B. The petition for writ of certiorari has been timely filed in accordance with Rule 13.4 of the Rules of this Court. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fifth Amendment to the United States Constitution provides in pertinent part: "[N]or shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 42 United States Code, § 1983, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage,

> of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

The Ninth Circuit Court of Appeals has spun a procedural tangle that threatens to close the doors of the federal courthouse to all who seek to vindicate their constitutionally guaranteed property rights. As a result, petitioner Mission Oaks Mobile Home Park (Mission Oaks) has been denied its day in court.

As described below in more detail, the unique procedural posture of this case affords this Court the opportunity to clear away the confusion without upsetting any court rulings on the merits. In brief, Mission Oaks filed a complaint in state court attacking a municipal ordinance, then filed a writ petition in state court challenging the evidentiary findings of the commission applying the ordinance. Before any rulings were made on the merits, Mission Oaks filed a federal complaint challenging the ordinance facially and as applied, and filed a reservation of rights in the only state proceeding that contained the federal causes of action.

Because the state complaint was filed first, the District Court and the Ninth Circuit refused to hear the federal case. Meanwhile, the state action has been stayed.

On May 1, 1989, the City of Hollister, California, adopted Ordinance No. 728, a rent control scheme that singles out Mission Oaks from all rental property owners in the city. Among other things, Ordinance No. 728 replaces the price set in the marketplace for the rental of mobile home park spaces with a government-imposed limit on rent increases that ensures that the income of Mission Oaks will not keep pace with inflation.[1]

Mission Oaks on September 28, 1990, filed a challenge to Ordinance No. 728 in the Superior Court of the State of California for the County of San Benito (state complaint). In addition to causes of action under state law, the state complaint contained facial challenges to Ordinance No. 728 on federal takings, due process, and equal protection grounds, and under 42 U.S.C. § 1983. Since it believed that Ordinance No. 728 worked a taking of its property without

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[1] Rent increases that exceed 80% of the inflation rate or 8% of the prior rent are subject to review. In the review process, rent increases will not be permitted to increase net operating income by more than 40% of the inflation rate. Code of the City of Hollister Chapter 13-B, §§ 13B-5, 13B-30.

just compensation, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, Mission Oaks had no choice but to file a complaint in the Superior Court prior to filing a federal complaint. This Court held in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), that a cause of action under the Just Compensation Clause of the Fifth Amendment is not ripe until the property owner is denied compensation through the procedures provided by the state for securing such compensation. 473 U.S. at 194-97.

Although Mission Oaks would have preferred that a federal court decide its federal claims, the possibility of merger or bar extinguishing these claims forced it to include the federal claims in the state complaint. This fear proved to be an accurate forecast and not a phobia, as the Ninth Circuit subsequently held in *Palomar Mobilehome Park Association v. City of San Marcos*, 989 F.2d 362 (9th Cir. 1993), that res judicata will bar federal claims that could have been but were not litigated in a completed state court proceeding, *including the takings claim that does not ripen until the state denies compensation*. 989 F.2d at 364-65.

Before the Superior Court had ruled on any of the claims brought by Mission Oaks, the Ninth Circuit in *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951

(9th Cir. 1991), *vacated*, ___ U.S. ___, 121 L. Ed. 2d 4 (1992), *modified*, 987 F.2d 662, 663 (9th Cir. 1993), determined that compensation was unavailable in California courts under a physical taking attack on mobile home rent control, and thus allowed plaintiffs to file suits under this theory directly in the federal District Court. *Sierra Lake Reserve*, 938 F.2d at 955 (futility exception to *Williamson County*). As Mission Oaks contended that Ordinance No. 728 combined with state regulations to effect a physical transfer of a property interest to its tenants, it soon thereafter filed a complaint in the United States District Court for the Northern District of California (federal complaint).[2] This complaint attacked Ordinance No. 728 both facially and as applied by the Hollister Rent Commission in a decision dated May 13, 1991.[3]

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[2] This Court's decision in *Yee v. Escondido*, 503 U.S. __, 118 L. Ed. 2d 153 (1992), rejected the physical taking theory that allowed property owners to file takings claims directly in the federal District Court. This is, at this point, irrelevant. The equal protection and due process claims are ripe and have been properly brought in the District Court.

[3] This decision was also the subject of a petition for writ of mandate (writ petition) filed in the Superior Court on July 12, 1991. The writ petition did not raise any federal

(continued...)

The federal complaint alleged a taking without just compensation, as well as due process, equal protection, substantive due process and federal civil rights violations under the United States Constitution, and a variety of state law causes of action. Mission Oaks attempted to insulate its federal facial claims from state court determination by filing a reservation in the Superior Court on October 1, 1991, prior to any court rulings, pursuant to *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964). Appendix C. The City of Hollister's motion to strike the reservation was denied on October 22, 1991. App. A-5. That same day, Mission Oaks' motion for summary judgment and the city's motion for judgment on the pleadings were denied. *Id.* On May 7, 1992, the Superior Court filed an order staying the state case pending the resolution of the federal action. Appendix E.

The United States District Court for the Northern District of California refused to exercise jurisdiction over the federal complaint and dismissed the complaint pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). *Mission Oaks*

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[3] (...continued)
issues, and Mission Oaks did not litigate federal issues in the proceeding. The petition was denied on December 20, 1991, and the California Court of Appeal for the Sixth Appellate District affirmed this decision on June 7, 1993.

Mobile Home Park v. City of Hollister, 788 F. Supp. 1117, 1122 (N.D. Cal. 1992); Appendix D-16. The court ruled that the *England* reservation was not applicable, since the federal complaint was filed after "the case had proceeded substantially" in the state court. App. D-15-16.

The Ninth Circuit affirmed this decision. *Mission Oaks Mobile Home Park v. City of Hollister*, App. A-10-12. Petitioner's petition for rehearing and suggestion for a rehearing en banc, filed pursuant to Federal Rules of Appellate Procedure, Rules 35 and 40, was denied on August 13, 1993. App. B.

The decision below closes the federal courthouse doors on the ripe and timely federal equal protection and due process claims just because a property owner sought to pursue a takings claim and was forced to first seek compensation in a state court. There is no reason why claims of violations of rights secured by the United States Constitution, which have not yet been decided by any court, cannot be litigated in a federal District Court.

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REASONS FOR GRANTING THE WRIT

The Ninth Circuit's decision in this case conflicts with the decisions of other Courts of Appeals on the appropriateness of *Younger* abstention under these

circumstances. It also conflicts with the decisions of other Courts of Appeals allowing *England* reservations when a state court case is filed prior to the federal court case, and allowing for reservations outside of the *Pullman* abstention context. *See Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). Supreme Court Rule 10.1(a) provides that the existence of conflicting rulings in the circuits is a reason for granting review. In addition, the federal procedural questions are important matters that should be decided by this Court, as provided in Supreme Court Rule 10.1(c).

I

THE NINTH CIRCUIT HAS EXTENDED THE DOCTRINE OF YOUNGER ABSTENTION TO AREAS THIS COURT AND THE OTHER COURTS OF APPEALS HAVE NOT SANCTIONED

Younger abstention is rooted in the salutary notion that the federal government should "not unduly interfere with the legitimate activities of the States." *Younger*, 401 U.S. at 44. *Younger* abstention requires the dismissal of a federal proceeding, *see Hicks v. Miranda*, 422 U.S. 332, 350 (1975), and was first adopted by this Court to prevent state court defendants in criminal prosecutions from seeking a federal injunction of the state proceedings. *Younger*, 401 U.S. at 53-54. This Court had subsequently extended

the doctrine to bar declaratory relief, *Samuels v. Mackell*, 401 U.S. 66 (1971), and to prevent federal court interference with civil enforcement proceedings brought by the state "in aid of and closely related to criminal statutes," *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (injunction against exhibiting obscene films under public nuisance statute).

This Court has proceeded to apply *Younger* in the contexts of enforcement proceedings that were not related to criminal statutes (*see Juidice v. Vail*, 430 U.S. 327 (1977)) and even in proceedings between two private parties (*Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 18 (1987)). Throughout the evolution of the doctrine, however, there has been one constant: the federal plaintiff was the *subject* of the enforcement proceedings in the state court or administrative process.[4] This Court has never held that *Younger* abstention

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[4] For purposes of *Younger*, administrative hearings that are "judicial in nature" and the state court review of these decisions are considered a unitary system. *See Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 627-29 (1986). Thus, the target of a coercive administrative hearing who is technically the plaintiff or petitioner in state court is still the subject of enforcement proceedings. *See Fresh International Corp. v. Agricultural Labor Relations Board*, 805 F.2d 1353, 1360 n.8 (9th Cir. 1986).

is appropriate in a case in which the federal plaintiff instigated the state proceedings.

It should be obvious that *Younger* is not triggered when parallel proceedings are initiated by the same party. In *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350 (1989) (*NOPSI*), this Court reversed the Fifth Circuit's finding that *Younger* abstention was required when a state court challenge to a state public utility ratemaking order was pending. *NOPSI*, 491 U.S. at 373. The federal defendants' attempt to characterize the state judicial review process as a continuation of the administrative action initiated by the ratemaking body was rejected by the Court.[5] The *NOPSI* Court did not find abstention appropriate under *Younger* despite the pendency of the state court review, explaining:

> [T]here is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts. Viewed as it should

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[5] The Court based this conclusion on the finding that public utility ratemaking was "an essentially legislative" and not judicial act. *NOPSI*, 491 U.S. at 371. Under California law, rent control boards can exercise some quasi-judicial functions. *See McHugh v. Santa Monica Rent Control Board*, 49 Cal. 3d 348, 372 (1989). The important point for our purposes is that the regulatory body *initiated* the challenged administrative proceedings in *NOPSI*. 491 U.S. at 356.

> be, as no more than a state-court challenge to completed legislative action, the Louisiana suit comes within none of the exceptions that Younger and later cases have established.

NOPSI, 491 U.S. at 373. Thus, the inability of the federal defendants to relate NOPSI's state court action back to the administrative proceedings which were brought *against* NOPSI removed the case from the ambit of *Younger* abstention.

This approach is firmly rooted in the prior decisions of this Court. In *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, this Court held that *Younger* abstention was required when a party against whom administrative proceedings were filed sought to enjoin those proceedings by filing a lawsuit under 42 U.S.C. § 1983 in the federal District Court. *Dayton*, 477 U.S. at 628. The *Dayton* Court distinguished the case *Patsy v. Board of Regents*, 457 U.S. 496, 516 (1982), which held that administrative remedies need not be exhausted before filing a federal civil rights claim under 42 U.S.C. § 1983: "Unlike Patsy, the administrative proceedings here are *coercive rather than remedial*, began before any substantial advancement in the federal action took place, and involve an important state interest." *Dayton*, 477 U.S. at 627 n.2 (emphasis added). *See also Patsy*, 457 U.S. at 518 (White, J., concurring)

("[t]he result today is also fully consistent with our decisions that a *defendant* in a civil or administrative enforcement proceeding may not enjoin and sidetrack that proceeding by resorting to a § 1983 action in federal court." (Emphasis added)).

To extend *Younger* to cover pending state actions that were *initiated* by the federal plaintiff is to take the doctrine far afield. The Ninth Circuit once recognized this, as *Fresh International Corp. v. Agricultural Labor Relations Board* includes this statement:

> Although *Younger* abstention ordinarily would not apply when a federal plaintiff also is the plaintiff in state court ... it applies here, because the judicial proceeding filed by [plaintiff] was not truly voluntary; [plaintiff] petitioned for review only because the [defendant] initiated agency proceedings and entered an order against the company.

Id. at 1360 n.8 (citation omitted).[6]

A survey of other Circuits underscores the complete inappropriateness of *Younger* abstention in cases where the federal plaintiff initiated the state proceedings. As could be

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[6] The Ninth Circuit departed from this principle in *Beltran v. State of California*, 871 F.2d 777, 781 (9th Cir. 1988), perhaps inadvertently, as the court failed even to mention the significance of the same parties initiating the federal and state proceedings.

expected, it is rare that a Court of Appeals would even address the issue. However, at least four Circuits have explicitly rejected the approach followed in the court below and expressly confine *Younger* abstention to circumstances in which a party who is involuntarily subject to state coercive proceedings attempts to disrupt those proceedings via a federal lawsuit. *See Kercado-Melendez v. Aponte-Roque*, 829 F.2d 255, 261 (1st Cir. 1987) (no abstention when federal plaintiff had "option to initiate a state proceeding to remedy a constitutional wrong perpetrated by a state actor"); *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Commission*, 791 F.2d 1111, 1117 (3d Cir. 1986) (same parties were plaintiffs in state and federal court and did not seek to enjoin a state judicial proceeding, tipping balance against *Younger* abstention and in favor of leaving plaintiffs "'free to bring suit in both the state and federal forums for the same cause of action'" (citation omitted)); *Crawley v. Hamilton County Commissioners*, 744 F.2d 28, 30 (6th Cir. 1984) ("the federal plaintiffs are also *plaintiffs* in the state court action ... [and] are not attempting to use the federal courts to shield them from state court enforcement efforts. Accordingly, there is no basis for *Younger*

abstention" (emphasis in original));[7] *Hinrichs v. Whitburn*, 975 F.2d 1329, 1333 (7th Cir. 1992) ("'*Younger* is confined to cases in which the federal plaintiff ha[s] engaged in conduct actually or arguably in violation of state law, thereby exposing himself to an enforcement proceeding in state court'" (citation omitted)).[8]

When the federal plaintiff is not attempting to interfere with state proceedings that were initiated coercively against it, the concern is not present that the federal action will "unduly interfere" with state activities, and federal court determinations do not undermine "a proper respect for state functions." *Younger*, 401 U.S. at 44. On the contrary, since *Younger* is the exception and not the rule, under these circumstances the federal court has a "virtually unflagging obligation" to exercise its jurisdiction. *Colorado River Water*

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[7] Amazingly, the District Court below uses this very citation to support its decision that *Younger* abstention *was* appropriate. *Mission Oaks*, 788 F. Supp. at 1122. No one can possibly contend that there were "enforcement efforts" directed against petitioner in the Superior Court.

[8] The most cogent analysis of the rationale behind the requirement that the federal plaintiff be the subject of state enforcement proceedings was written by Judge Posner in an opinion which has been vacated by this Court due to mootness. *Alleghany Corp. v. Haase*, 896 F.2d 1046, 1051-53 (7th Cir. 1990), *vacated sub nom. Dillon v. Alleghany Corp.*, ___ U.S. ___, 113 L. Ed. 2d 441 (1991).

Conservation District v. United States, 424 U.S. 800, 817 (1976). This Court has of course "never held that in all cases where there are parallel state and federal proceedings involving a federal constitutional issue, the federal court should hold its hand and allow the state court to proceed first." *Deakins v. Monaghan*, 484 U.S. 193, 207 (1988) (White, J., concurring). Both suits should go forward. *See Kline v. Burke Construction Co.*, 260 U.S. 226, 230-32 (1922).

Were the domain of *Younger* to extend over cases in which the federal plaintiff initiated the action in the state courts, property owners throughout the country would find themselves in a quandary. *Williamson County* requires that they first seek and be denied compensation in state court before a claim under the Just Compensation Clause of the United States Constitution can ripen. 473 U.S. at 194-97. But their right to a federal forum for their other, ripe federal claims will be denied upon filing the state lawsuit unless prior to the state court filing "proceedings of substance on the merits have taken place in the federal court." *Hicks*, 422 U.S. at 349. Thus, the right to litigate in federal court will depend on such factors as the availability of injunctive relief, *see Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 238 (1984) (preliminary injunction is a proceeding of

substance on the merits), the speed with which this relief can be secured or other proceedings on the merits can be scheduled, and the length of the state statute of limitations period--instead of the source of the right being asserted.

Parties with a claim under the Just Compensation Clause may thus be forced to choose between forfeiting either the takings claim or the federal forum. This Court should grant review to settle this Circuit conflict and determine whether *Younger* should be extended in a manner that creates this Hobson's choice.

II

THE NINTH CIRCUIT'S REFUSAL TO ALLOW AN ENGLAND RESERVATION IN THIS CASE CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS

Petitioner found itself in an awkward procedural position when *Sierra Lake Reserve* was issued by the Ninth Circuit. Petitioner had brought both state and federal claims in the Superior Court, since *Williamson County* required that the takings claim be ripened by a denial of compensation in state court, and a failure to raise the federal claims might result in their extinction under res judicata principles once final judgment was entered in the state court. *See Palomar Mobilehome Park Association*, 989 F.2d at 364-65. Then *Sierra Lake Reserve* allowed petitioner to bring its physical

taking claim directly in the federal court, which is where petitioner would rather have all of its federal claims decided. Since none of the federal issues had yet been decided by the state court, petitioner seized upon a logical solution to this dilemma and filed an *England* reservation.

The reservation was denied effect by the District Court, because the federal case was not stayed pursuant to *Pullman* abstention, and because the state case had "proceeded substantially" prior to the filing of the federal case. App. D-15-16. The Ninth Circuit affirmed, on the grounds that *England* reservations are "inappropriate in the context of *Younger* abstention." App. A-11. But the procedural circumstances that require the *England* reservation occur outside of the *Pullman* abstention context, as several other Courts of Appeals have held. A reservation of the right to litigate federal issues in a federal court *is appropriate* when parties are forced into the state court in order that a Just Compensation Clause claim can ripen. The Eleventh Circuit has held accordingly, *Fields v. Sarasota Manatee Airport Authority*, 953 F.2d 1299, 1306 (11th Cir. 1992), in conflict with the decision in the court below. This Court should grant certiorari to decide whether property owners can reserve their federal claims in state court proceedings that *Williamson County* requires them to bring.

A. England Reservations Should Not Be Confined to Cases Involving Pullman Abstention

This Court in *England* created a procedure to aid parties who are forced to litigate their case involuntarily in the state court while the federal court stayed proceedings under the *Pullman* abstention doctrine. *England* provided that a party could preserve its federal claims for determination by the federal court, by making a reservation on the record in the state court. *England*, 375 U.S. at 421. The *England* Court rejected the notion that a party is entitled to no more than this Court's potential review of a state court determination of federal rights:

> [S]uch review, even when available by appeal rather than only by discretionary writ of certiorari, is an inadequate substitute for the initial District Court determination ... to which the litigant is entitled in the federal courts. This is true as to issues of law; it is especially true as to issues of fact.

Id. at 416. But since the case *Government and Civic Employees Organizing Committee v. Windsor*, 353 U.S. 364, 365-66 (1957), seemed to require that a party bring federal claims in the state court when the federal court abstains to allow state court interpretation of a state law, res judicata could preclude federal trial court litigation. *England*, 375 U.S. at 414-15.

In crafting a solution to this problem, the *England* Court recognized that

> [t]he line drawn should be bright and clear, so that litigants shunted from federal to state courts by application of the abstention doctrine will not be exposed ... to procedural traps operating to deprive them of their right to a District Court determination of their federal claims.

Id. at 418.

England arose in the context of *Pullman* abstention, in which the federal proceeding is filed first and is stayed pending the state court determination of unsettled issues of state law that could avoid the necessity of reaching the federal question. *See Railroad Commission of Texas v. Pullman Co.*, 312 U.S. at 501. This Court has on occasion implied that *England* is appropriate only for *Pullman* cases. *See Allen v. McCurry*, 449 U.S. 90, 101 n.17 (1980); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 480 n.14 (1983). But *Pullman* cases are not the only ones where "procedural traps" lurk that can deprive a party of its right to have its federal claims determined by a District Court. The reasoning of *England* is equally valid in cases such as this one, in which a party was forced involuntarily into the state court in order that its federal takings claim could ripen. *See Williamson County*, 473 U.S. at 195.

Some Courts of Appeals have recognized that an *England* reservation is not necessarily confined to the *Pullman* context. *See Bradley v. Pittsburgh Board of Education*, 913 F.2d 1064, 1071 (3d Cir. 1990) ("look to the rationale underlying *England* to determine if it has equal applicability" outside the *Pullman* context); *Barnes v. McDowell*, 848 F.2d 725, 732 (6th Cir. 1988) (plaintiff filed in state court first and "his constitutional claim never was resolved by any of the state tribunals," achieving the equivalent of an *England* reservation). Other Circuits have held the opposite. *See Schuster v. Martin*, 861 F.2d 1369, 1374 (5th Cir. 1989) (abstention required for *England* reservation); *Duty Free Shop, Inc. v. Administracion de Terrenos de Puerto Rico*, 889 F.2d 1181, 1183 (1st Cir. 1989) (*England* reservations are for *Pullman* abstention cases, not *Younger* abstention).

This Court should grant the petition for certiorari in order to settle this important procedural question and adopt a "bright and clear rule" so litigants can avoid the "procedural traps" that are sprung in non-*Pullman* contexts.

B. When a Plaintiff Is Forced to Seek Compensation in State Court in Order for Its Federal Takings Claim to Ripen, Plaintiff Is Not Voluntarily in State Court, and England Should Apply

By its terms, the reservation prescribed in *England* prevents a party which is forced by federal law to bring its causes of action in state court from losing its right to a federal forum. When *England* applies, an express reservation is not even necessary, but will always be effective. This Court held:

> [A]n explicit reservation is not indispensable; the litigant is in no event to be denied his right to return to the District Court unless it clearly appears that he *voluntarily* did more than Windsor required and *fully litigated* his federal claims in the state court. When the reservation has been made, however, his right to return will *in all events* be preserved.

England, 375 U.S. at 421-22 (emphasis added; footnotes omitted). Petitioner has certainly not fully litigated its federal claims in the state court. Those claims have not been decided, and the entire state case has been stayed. App. E.

Nor can it be said that petitioner was *voluntarily* in state court. In order to pursue a claim for a taking without just compensation under the Fifth and Fourteenth Amendments, petitioner had to bring a lawsuit in state court to ripen the claim. *Williamson County*, 473 U.S. at 195;

Sinaloa Lake Owners Association v. City of Simi Valley, 882 F.2d 1398, 1402-04 (9th Cir. 1989). Under the circumstances, petitioner has been "shunted from federal to state courts," *England*, 375 U.S. at 418, just as much as a party subject to *Pullman* abstention.

This fact of procedural life has been recognized and corrected by one other Court of Appeals. The Eleventh Circuit has held that the *England* reservation procedure is appropriate in the context of takings claims even though *Pullman* abstention does not apply when the state complaint has been filed prior to the federal complaint. *Fields*, 953 F.2d at 1306.

The *Fields* court extended *England* to cover takings cases because, "[t]he operation of *Williamson County*, much like the abstention doctrine at issue in *England*, forces would-be federal court litigants to first litigate their claims in state court." 953 F.2d at 1304. *Fields* rested on the holding that property owners "who are forced to pursue state court proceedings in order to satisfy exhaustion requirements imposed by federal law incident to a takings clause claim are 'involuntarily' in the state courts." 953 F.2d at 1306.

The *Fields* court properly recognized that "the question is whether the citizens of this country are to be barred from ever vindicating a federal constitutional right through the

federal court system." 953 F.2d at 1307 n.8. Petitioner contends that a rent control ordinance that applies only to petitioner and arbitrarily limits its income violates the Equal Protection, Due Process, and Takings Clauses of the United States Constitution. The Just Compensation Clause claim requires initial litigation in state court, but a final judgment in that court will serve to bar litigation of the nascent federal takings claim as well as all other federal claims that could have been brought in that forum. *Palomar Mobilehome Park Association*, 989 F.2d at 364-65 (in which an explicit reservation was not attempted).

Property owners seeking to protect their constitutional rights are thus forced either to forego a state lawsuit--thereby forfeiting their claims under the Takings Clause--and file their other claims in the federal District Court, or to file the nontakings claims in federal court and hope that the state court proceeding does not end first and extinguish these other constitutional claims in the federal court via res judicata. The Eleventh Circuit provides a sensible third option, allowing an *England* reservation to preserve the federal claims while the takings claim is ripened through a state court proceeding. This Court should grant review to settle this conflict between Circuits and determine exactly how

completion of the state case that is currently on hold will affect petitioner's federal claims that have been reserved.

CONCLUSION

By inappropriately extending the *Younger* doctrine and restricting the use of an *England* reservation, the Ninth Circuit has jeopardized the ability of a party with a cause of action under the Just Compensation Clause to have its day in federal court. Petitioner should not have had to choose between forfeiting its takings claim or forfeiting its right to a federal forum to protect rights secured by the United States Constitution. Petitioner has not yet had its federal claims decided by any court, and has properly invoked its right to a federal forum. Review by this Court is necessary to restore this right.

Other Circuits have kept *Younger* within its proper bounds, and allow for *England* reservations outside the *Pullman* abstention context. Review by this Court is necessary to settle these conflicts, remove the confusion, and reopen the doors to the federal courthouse. Petitioner

respectfully urges this Court to grant this petition for writ of certiorari.

DATED: November, 1993.

Respectfully submitted,

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APPENDIX A
A-1

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MISSION OAKS MOBILE HOME PARK, a California General Partnership,	No. 92-15692
Plaintiff-Appellant,	D.C. No. CV-91-20733-JW(EAI)
v.	OPINION
CITY OF HOLLISTER; HOLLISTER MOBILEHOME RENT COMMISSION,	
Defendants-Appellees.	

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Argued and Submitted
March 2, 1993--Pasadena, California

Filed March 30, 1993

Before: Dorothy W. Nelson, Charles Wiggins, and Edward Leavy, Circuit Judges.

Opinion by Judge Wiggins

SUMMARY

Civil Litigation and Procedure/Jurisdiction

The court of appeals affirmed a judgment of the district court. The court held that when the plaintiff failed to identify unambiguous authority to the contrary, a state court was assumed to be an adequate forum in which to raise a federal takings claim, and *Younger* abstention was proper.

Appellant Mission Oaks Mobile Home Park sued appellee City of Hollister in state court, challenging the City's mobilehome park rent control ordinance. After a trial date had been set, and before trial, Mission Oaks filed an action in district court, alleging the same claims. The district court dismissed the complaint under the *Younger* doctrine.

Mission Oaks relied on a Ninth Circuit opinion holding that a plaintiff challenging a mobilehome park rent control ordinance did not have to bring a claim in California state court before its federal claim would ripen because those courts disfavored takings claims based on rent control ordinances and plaintiff would have been unable to obtain just compensation through an inverse condemnation action under any circumstances.

[1] The state court proceedings were underway before the federal action was initiated, and were ongoing at the time the district court abstained, satisfying the first prong of *Younger*. [2] California had a substantial interest in enforcing and considering the constitutionality of mobilehome park rent control ordinances, meeting *Younger*'s second prong. [3] The Supreme Court had vacated the decision on which Mission Oaks relied. Nor was that decision made in the context of a *Younger* abstention. Further, the Supreme Court had overruled another Ninth Circuit decision which had been important to the conclusion by Mission Oaks's authority that such takings claims were viewed skeptically by California courts. In the absence of unambiguous authority to the contrary, state court proceedings are assumed to be adequate forums in which to raise federal takings claims. *Younger*'s final prong was met.

[4] Mission Oaks could fully assert and pursue its takings claim in state court. Because of identity of issues, federal proceedings would interfere with ongoing state proceedings, and federal rulings could easily disrupt the state proceedings. Thus, the district court did not abuse its discretion by abstaining.

COUNSEL

Robert S. Coldren, Peter K. Rundle, Hart, King & Coldren, Santa Ana, California, for plaintiff-appellant.

Henry E. Heater, Endeman, Lincoln, Turek & Heater, San Diego, California, for the defendants-appellees.

OPINION

WIGGINS, Circuit Judge:

Mission Oaks Mobile Home Park ("Mission Oaks"), a mobilehome park in Hollister, California, brought suit in federal court challenging the City of Hollister's ("City") mobilehome park rent control ordinance. Mission Oaks had filed a challenge to the rent control ordinance in state court alleging the same basic violations prior to filing the federal suit. The district court dismissed the federal suit on *Younger* abstention grounds. *Mission Oaks Mobile Home Park v. City of Hollister*, 788 F. Supp. 1117, 1118-22 (N.D. Cal. 1992). We have jurisdiction over this timely appeal pursuant to 28 U.S.C. § 1291. We affirm.

FACTS

Mission Oaks filed an action in state court in September, 1990, challenging the City's Mobilehome Park

Rent Control Ordinance on several grounds. In February 1991, Mission Oaks filed a petition with the Hollister Rent Commission to increase rent pursuant to the procedure outlined in the ordinance. The increase was approved but in an amount significantly lower then requested. In July, 1991, Mission Oaks filed a motion for partial summary judgment and, a day later, a petition for a Writ of Mandate challenging the Commission's decision. In October, 1991, Mission Oaks filed a "Reservation to Litigate Federal Claims in the United States District Court."

At a hearing on October 22, 1991, the Superior Court denied Mission Oaks's motion for summary judgment, the City's motion for judgment on the pleadings, and the City's motion to strike the Reservation. Two months later, a hearing was held on the writ challenging the Rent Commission's decision, and the court denied the writ. The Superior Court set a trial date for May, 1992.

On October 30, 1991, Mission Oaks filed an action in federal district court alleging essentially the same claims as in the state court action. The City of Hollister moved for dismissal on several grounds. The district court dismissed the case, concluding "that dismissal under the *Younger* abstention doctrine [was] appropriate." *Mission Oaks*, 788 F. Supp. at 1119.

STANDARD OF REVIEW

Whether a case meets the requirements of a particular abstention doctrine is a question of law that we review de novo. *Gartrell Constr., Inc. v. Aubry*, 940 F.2d 437, 441 (9th Cir. 1991) (reviewing a district court's dismissal of a case based on *Younger* abstention). Once we have determined that the requirements are met, we review the district court's actual decision to abstain only for an abuse of discretion. *See Privitera v. California Bd. of Medical Quality Assurance*, 926 F.2d 890, 895 (9th Cir. 1991).

DISCUSSION

Younger abstention embodies "a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). Under *Younger* and its progeny, "'abstention is appropriate . . . if (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise federal questions.'" *Beltran v. California*, 871 F.2d 777, 781 (9th Cir. 1988) (quoting *Fresh Int'l Corp. v. Agricultural Labor Relations Bd.*, 805 F.2d 1353, 1357-58 (9th Cir. 1986)).

[1] The first prong requires that the state proceedings be ongoing. This requirement is met by showing that "'the state proceedings were underway before initiation of the federal proceedings.'" *Kitchens v. Bowen*, 825 F.2d 1337, 1341 (9th Cir. 1987), *cert. denied*, 485 U.S. 934 (1988) (citation omitted). In this case, not only were the state proceedings underway before suit was filed in federal court, they were still ongoing when the district court decided to abstain. The first prong is satisfied.

The second prong requires that the proceedings implicate important state interests. Mission Oaks contends that this prong is not met, relying primarily on the fact that rental rates are regulated by local ordinance rather then statewide law. We reject Mission Oaks's argument and conclude that important state interests are implicated in these proceedings.

[2] The district court inferred that California has a substantial interest in enforcing and considering the constitutionality of mobilehome park rent control ordinances from the fact that the state has regulated mobilehome parks extensively. *Mission Oaks*, 788 F. Supp. at 1121. While Mission Oaks argues that the decision to allow local governments substantial control over mobilehome park rental rates evinces lack of an important "state" interest, we

disagree. It may well be that the state has determined that local government action will best address the problem as it exists in each community. Moreover, we believe that the district court was correct in finding that "California has a substantial interest in enforcing and considering the constitutionality of mobilehome park rent control ordinances." *Id.*; *cf. Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 625-29 (1986) (indicating that a wide range of interests qualify as important state interests for purposes of *Younger* abstention); *Fresh Int'l Corp.*, 805 F.2d at 1358 (also indicating that many varied interests satisfy the second prong of the *Younger* analysis). The second prong is satisfied.

The third and final prong requires that the state proceedings provide an adequate opportunity to raise federal questions. Relying on this court's decision in *Sierra Lakes Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991), *vacated*, 113 S. Ct. 31 (1992), Mission Oaks argues that California courts provide an inadequate forum in which to raise a federal "takings" claim.

We conclude, however, that *Sierra* is inapposite. In *Sierra*, this court considered whether a plaintiff challenging a mobilehome park rent control ordinance had to bring a claim in state court before a federal claim would be

considered ripe. The court held that no state court action was necessary because the plaintiff would be unable to "'obtain just compensation through an inverse condemnation action under any circumstances.'" *Id.* at 955 (citation omitted).

[3] First, we note that the Supreme Court has vacated the *Sierra* decision. *City of Rocklin v. Sierra Lakes Reserve*, 113 S. Ct. 31 (1992). Second, *Sierra* neither arose nor was considered in the context of *Younger* abstention. Third, one of the principal reasons for the court's conclusion that California courts take "a dim view of takings claims based on rent control ordinances," *Sierra*, 938 F.2d at 955, was the state appellate court's refusal to follow this court's opinion in *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1987), *cert. denied* 485 U.S. 940 (1988), which the Supreme Court has subsequently overruled. *See Yee v. City of Escondido*, 112 S. Ct. 1522, 1526-29 (1992). Finally, we refuse to find that the courts of California are inadequate forums in which to raise federal takings claims. The Supreme Court has indicated that it will assume that state court proceedings are adequate "in the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15, (1987). Mission Oaks has failed to identify any such unambiguous authority. We are

convinced, as was the district court, that the state courts will provide Mission Oaks an adequate opportunity to raise federal questions. *Mission Oaks*, 788 F. Supp. 1122. Thus, all the prongs of the *Younger* abstention doctrine are satisfied.

We must determine, then, whether the district court abused its discretion by abstaining. *See Privitera*, 926 F.2d at 895. Mission Oaks contends that this court's decision in *Lebbos v. Judges of Super. Ct., Santa Clara County*, 883 F.2d 810 (9th Cir. 1989), indicates that the court did abuse its discretion and that abstention was inappropriate in this case.

[4] In *Lebbos*, this court held that abstention was inappropriate because the very nature of the proceedings in state court prevented the complaining party from fully pursuing his federal claims in that forum. *Id.* at 817. In addition, the court concluded that the federal proceedings would not interfere in any way with the ongoing state proceedings. *Id.* Here, however, the facts are different. Mission Oaks can fully assert and pursue its federal takings claims in the state action. Moreover, because both the state and federal cases involve takings issues, we believe that the federal proceedings in this case would interfere with the ongoing state proceedings. Both proceedings would be

considering basically the same questions, the same evidence, and the same arguments, though under different theories of law. The rulings of the federal court on any particular issue could easily disrupt the state proceedings. Thus, we conclude that the *Lebbos* is inapposite and that the district court did not abuse its discretion.

Mission Oaks attempted to reserve its federal claims for federal adjudication by filing a reservation of those claims in the state court over a year after the case was filed. We conclude that such a reservation is inappropriate in the context of *Younger* abstention. *See Beltran*, 871 F.2d at 783 n.8 ("[W]hen *Younger* abstention applies, federal plaintiffs cannot reserve their federal claim from state court adjudication for later decision by the federal court.").

Finally, we reach the City's request for attorney's fees under Rule 38 of the Federal Rules of Appellate Procedure. Under that rule, we have discretion to award fees for the bringing of a frivolous appeal. We conclude that this case does not warrant such sanctions. While we disagree with most of Mission Oaks's arguments, the appeal was not frivolous. Even in the face of precedent, Mission Oaks is entitled to make a good faith argument for reconsideration of existing law. Mission Oaks's arguments may not have carried the day, but they certainly are not "wholly without

merit." *See Wilcox v. Commissioner of Internal Revenue*, 848 F.2d 1007, 1009 (9th Cir. 1988).

AFFIRMED.

APPENDIX B

B-1 Filed August 13, 1993

Not for Publication

United States Court of Appeals

For the Ninth Circuit

MISSION OAKS MOBILE Home Park, a California General Partnership,	)	No. 92-15692
Plaintiff-Appellant,	)	D.C. No. CV-91-20733-JW(EAI)
v.	)	ORDER
CITY OF HOLLISTER; HOLLISTER MOBILEHOME RENT COMMISSION,	)	
Defendants-Appellees.	)	

Before: D.W. NELSON, WIGGINS, and LEAVY, Circuit Judges

The panel as constituted in the above case has voted unanimously to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc hearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

APPENDIX C
C-1

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Attorneys for Plaintiff, Mission Oaks Mobilehome Park

Filed October 1, 1991

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BENITO

MISSION OAKS MOBILEHOME PARK,	CASE NO. 17362
Plaintiff and Petitioner,	RESERVATION TO LITIGATE FEDERAL CLAIMS IN THE UNITED STATES DISTRICT COURT [England v. Louisiana State Board of Medical Examiners]
vs.	
CITY OF HOLLISTER, and DOES 1 through 100, inclusive,	
Defendants and Respondents.	

TO THE ABOVE-ENTITLED COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff Mission Oaks Mobilehome Park ("Plaintiff") hereby advises all parties to this action and the above-entitled Court that Plaintiff expressly reserves its rights to raise and litigate its rights pursuant to the United States Constitution

and Federal Statutes, as fully set forth in the Complaint on file herein, in the United States District Court pursuant to England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 84 S.Ct. 461 (1964). (A copy of which is attached hereto and incorporate herein by reference).

Dated: September 30, 1991 Respectfully submitted,

HART, KING & COLDREN

By/s/ JAMES M. TRUSH
Robert S. Coldren
James M. Trush
Attorneys for Plaintiff Mission Oaks Mobilehome Park

[ATTACHMENT OMITTED]

APPENDIX D

D-1 Filed March 30, 1992

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MISSION OAKS MOBILE HOME PARK,	)
	) NO. C-91-20733 JW
Plaintiff,	)
	) SECOND AMENDED
vs.	) ORDER FOR
	) PUBLICATION GRANTING
	) DEFENDANTS' MOTION
CITY OF HOLLISTER, et al	) TO DISMISS
	)
	)
Defendants.	)
	)

I. INTRODUCTION

Plaintiff Mission Oaks, an owner of a mobilehome park in the City of Hollister, brought suit in federal court challenging the City of Hollister's mobilehome park rent control ordinance. Mission Oaks previously filed a challenge to the rent control ordinance in state court alleging the same state and federal constitutional and § 1983 violations.

Defendants, City of Hollister et al, move for dismissal on the grounds that the pending action in state court duplicates the instant action, that the state suit was filed prior to the filing in federal court and that there have been substantial proceedings in the state court. Defendants

maintain that dismissal is appropriate under the doctrine of abstention and in order to avoid duplicative and piecemeal litigation.

For the reasons discussed below, the Court GRANTS Defendants' Motion to Dismiss on the grounds of *Younger* abstention.

II. BACKGROUND

A. State Court Proceedings

Mission Oaks filed an action in San Benito County Superior Court in September 1990, challenging the City of Hollister's Mobilehome Park Rent Control ordinance. Plaintiff alleged the following causes of action: inverse condemnation; denial of procedural due process; violation of equal protection; preemption; unconstitutional special tax; violation of 47 U.S.C. § 1983; preliminary and permanent injunction; declaratory relief; writ of mandate for general plan invalidity.

In February 1991, Mission Oaks filed a petition with the Hollister Rent Commission for a rent increase pursuant to the hearing process et forth in the Ordinance. Plaintiff was granted an increase in a lesser amount than had been requested. On July 12, 1991, Plaintiff filed a Petition for Writ of Mandate in the Superior Court challenging the Rent Commission's decision. Plaintiff alleged that the

Commission failed to make the necessary findings and that the evidence did not support the Commission's decision.

On July 11, 1991, Plaintiff filed a Motion for Summary Judgment on its claims that the Ordinance violated Plaintiff's rights to procedural due process and equal protection and that the Ordinance constituted a special tax. (*See* Defs.' Req. Judicial Notice, Ex. C).

On October 1, 1991, subsequent to the Ninth Circuit's decision in another challenge to a mobilehome park rent control ordinance, *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991), Mission Oaks filed in the state court a "Reservation to Litigate Federal Claims in the United States District Court." Defendants moved to strike the "Reservation."

At a hearing on October 22, 1991, the Superior Court denied the Plaintiff's summary judgment motion, and Defendants' motion for judgment on the pleadings as well as Defendants' motion to strike the Reservation. The judge did not rule on the legal effect of the Reservation. (Defs.' Mem. P. & A. Supp. Mot. Dismiss at 9).

Approximately two months later, on December 20, 1991, a hearing was held on Plaintiff's Writ challenging the Rent Commission's decision on Plaintiff's rent increase request. The Court denied the Writ, finding that "substantial

evidence" existed for the Commission to make its decision. (Pl.'s Opp'n Mot. Dismiss at 5).

The trial in Superior Court is scheduled to begin in May 1991.

B. Federal Court Proceeding

On October 30, 1991, Mission Oaks filed this action in District Court alleging the same claims as those in the state court action and an additional claim for substantive due process violation. Defendants now move for dismissal on the grounds of abstention and the policy rationale of avoidance of duplicative and piecemeal litigation. The Court notes that Defendants seek to cover all bases by arguing that any of the three established abstention doctrines as enunciated in *Younger v. Harris*, 401 U.S. 37 (1971); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); and *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941) are applicable. Additionally, Defendants content that the Supreme Court's decision in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), holding that in exceptional circumstances federal courts may dismiss actions in order to avoid duplicative litigation, is equally appropriate.

For the reasons discussed more fully below, this Court finds that dismissal under the *Younger* abstention doctrine in appropriate.

III. DISCUSSION

A. Ninth Circuit's Decisions on Takings Claims

Concurrently with Plaintiff's suit pending in state court, on July 9, 1991, the Ninth Circuit issued its decision in *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991). That case also involved a challenge to a mobilehome park rent control ordinance. In his opinion, Judge Kozinski reviewed the question of ripeness of the takings claim and found that the plaintiff had demonstrated "its inability to 'obtain just compensation through an inverse condemnation action under any circumstances'" in state court. *Sierra Lake*, 938 F.2d at 955 (quoting *Austin v. City and County of Honolulu*, 840 F.2d 678, 680 (9th Cir.) *cert. denied*, 488 U.S. 852 (1988)).

Judge Kozinski reasoned that because California courts had not followed the Ninth Circuit's holding in a previous takings claim case, *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1986) *cert. denied*, 485 U.S. 940 (1988), plaintiffs making similar claims need not exhaust their state court remedies before proceeding in federal court. *Sierra Lake*, 938 F.2d at 954-55.

The *Hall* decision, also penned by Judge Kozinski, found that mobilehome park owners challenging a rent control ordinance had stated a takings claim based on the

Supreme Court's holding in a physical takings case, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). However, subsequent opinions in state court suits have declined to follow that rationale. *See*, *Casella v. City of Morgan Hill*, 280 Cal. Rptr. 876, 881 (Cal. Ct. App. 1991) ("We repudiate *Hall's* attempt to bootstrap a mobilehome rent control ordinance -- an economic regulation -- to the Supreme Court's very narrow holding in *Loretto.*"); *See also*, *Yee v. City of Escondido*, 274 Cal. Rptr. 551 (Cal. Ct. App. 1990), *cert. granted in part*, 112 S.Ct. 294, *and motion to consolidate denied*, 112 S.Ct. 435 (1991), *and argued* Jan. 22, 1992.

Mission Oaks maintains that prior to *Sierra Lake* it was unable to bring suit in federal court because federal district courts routinely dismissed such claims on grounds of ripeness. Plaintiff urges the Court to adopt Judge Kozinski's view that state courts do not provide plaintiffs with an adequate opportunity to vindicate their constitutional claims.

In addition Plaintiff contends that the Reservation filed in the state court allows Mission Oaks to withdraw its federal constitutional and § 1983 claims from the state court proceeding.

As the Court's decision will illuminate further, this Court is not persuaded. The assumption that the court would

dismiss on grounds of ripeness amounts to conjecture and sophistry. Mission Oaks had the Opportunity to file originally in federal court but chose to proceed initially in state court.

B. Abstention Doctrines

The abstention doctrines enunciated in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), and *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941), are inapplicable in the present context. There is no complex state administrative procedure being challenged as required under *Burford* abstention. Nor is this a situation in which a state court ruling on state law would obviate the need for a ruling on the federal constitutional claims, as required in order for a court to abstain under *Pullman*.

Similarly, the Court does not find the existence of exceptional circumstances warranting dismissal in order to avoid duplicative and piecemeal litigation, as required for dismissal under the *Colorado River* doctrine. *Colorado River*, 424 U.S. at 818-19, (discussing the elements necessary and factors to consider in determination of "exceptional circumstances" which warrant a dismissal by federal court.). *See also Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25-26 (1983) (stating that when considering dismissal under the *Colorado River*

doctrine, courts are to "ascertain whether there exists 'exceptional' circumstances, the clearest of justifications, that can suffice under *Colorado River* to justify the surrender of that jurisdiction.").

In this instance, the fact that Mission Oaks filed suit in federal and state court does not rise to the level of exceptional circumstances necessary for the Court to surrender its jurisdiction.

1. Younger Abstention

In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court held that federal courts may not enjoin pending state court criminal proceedings. This principle has been expanded to apply to pending civil actions between private litigants, and to administrative proceedings. *See, e.g., Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987); *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986).

In *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) the Supreme Court developed a three part test to determine when *Younger* abstention is appropriate: (1) the state proceedings are ongoing; (2) the proceedings implicate an important state interest; (3) the state proceedings provide an adequate

opportunity to raise federal questions. *Middlesex*, 457 U.S. at 432.

The Ninth Circuit follows the three prong test. *Fresh Int'l Corp. v. Agricultural Labor Relations Bd.*, 805 F.2d 1353, 1357 (9th Cir. 1986). And as the court remarked in *Fresh Int'l Corp.*, "*Younger* and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings, absent extraordinary circumstances." 805 F.2d at 1356. In the instant case, the Court finds that the three prongs of *Middlesex* are met and *Younger* abstention is appropriate.

a) State Proceedings Are Ongoing

Mission Oaks initiated suit in state court over sixteen months ago. The state court has heard oral argument and made rulings on a summary judgment motion as well as Plaintiff's Writ Petition challenging the Rent Commission's action. Further, trial is set to commence in May 1992.

In contrast, the federal suit was filed only four and one-half months ago and this is the first matter the Court has had before it. Plaintiff has filed a claim, Defendant has not answered but has responded with this Motion to Dismiss. The Court has made no prior rulings on this matter. The federal court proceedings are still within the embryonic stage. *See, Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229,

238 (1984) (citing *Doran v. Salem Inn*, 422 U.S. 922, 929 (1975)).

Moreover, the Ninth Circuit has noted that in determining whether *Younger* applies, the "critical question is not whether the state proceedings are still ongoing but whether the state proceedings were underway before initiation of the federal proceedings." *Beltran v. California*, 871 F.2d 777, 782 (9th Cir. 1988) (citing *Kitchen v. Bowen*, 825 F.2d 1337, 1341 (9th Cir 1987), *cert. denied*, 485 U.S. 934 (1988)). *See also, Fresh Int'l Corp.*, 805 F.2d at 1358 (Abstention required only when the state proceedings have been initiated before any proceedings of substance on the merits have taken place in federal court) (quoting *Hicks v. Miranda*, 422 U.S. 332, 349 (1975)).

As noted above, Plaintiff initiated its action in state court over a year ago. This present Motion is the first matter to be considered in federal court. Thus no proceedings on the merits have taken place in federal court and the Court concludes that the first prong of the *Middlesex* test has been met.

b) Important State Interest

California has a state regulatory scheme regarding mobilehome parks. *See, e.g.*, Cal. Civ. Code § 798 et seq (West 1982 & Supp. 1992) (Mobilehome Residency Law);

Cal. Govt Code §§ 65863.7, 65863.8 (West 1983 & Supp. 1992) (Zoning Regulations); § 66427.4 (West 1983 & Supp. 1992) (Subdivisions, Maps, Conversion of Mobilehome Park).

Further importance of the regulation of mobilehome park rent is signified by the number of jurisdictions regulating rent: "Mobile homes rent controls exist in over 75 jurisdictions representing in excess of 35% of all mobile homes in this state." Werner Z. Hirsch & Joel G. Hirsch, *Legal-Economic Analysis of Rent Controls in a Mobilehome Context: Placement Values and Vacancy Decontrol*, 35 UCLA L. Rev. 399, 407-11 (1988).

Mission Oaks notes that newly constructed mobilehome parks are exempt from some of the state regulatory provisions and argues that this exemption indicates that mobilehome park rent control is not an important state interest. This is not persuasive. The fact is that the state legislature has enacted a range of provisions regulating the use, rental and zoning of mobilehome parks. The Court infers from this regulatory scheme that California has a substantial interest in enforcing and considering the constitutionality of mobilehome park rent control ordinances. *See, Fresh Int'l Corp.*, 805 F.2d at 1358-61 (noting Supreme Court's opinion in *Ohio Civil Rights Comm'n v. Dayton*

Christian Schools, Inc., 477 U.S. 619 (1986), citing with approval courts' decisions finding important state interests to exist in broad range of circumstances).

c) Adequate Opportunity to Raise Federal Claims

Mission Oaks initially chose to raise all of its constitutional claims in state court and filed the state lawsuit prior to attempting to obtain a rent increase pursuant to the provisions of the Ordinance. Notwithstanding Judge Kozinski's provocative statement in *Sierra Lake*, 938 F.2d at 955, this Court concludes that Plaintiff has not established that the available state court procedure will not provide an adequate opportunity to challenge the Hollister rent control ordinance.

Another district court considering this issue in a motion to dismiss found that state court proceedings provide an adequate forum in which to challenge mobilehome park rent control ordinances. *Casella v. City of Morgan Hill*, No. 91-1034, 1991 U.S. Dist. LEXIS 14904 (N.D. Cal. Oct. 4, 1991), *petition for cert. filed*, 60 U.S.L.W. 3322 (U.S. Oct. 15, 1991). The *Casella* opinion noted that state court proceedings provided a "full and fair opportunity to litigate" federal claims in state court. *Casella*, No. 91-1034, LEXIS 14904 at *7.

Casella opined that the state appellate court in *Casella v. City of Morgan Hill*, 280 Cal. Rptr. 876 (1991), rendered a thoughtful opinion explicating its decision to decline to follow the Ninth Circuit's rationale in *Hall*, 833 F.2d 1270. The Court concurs with the *Casella* District Court's finding that prior to rejecting the arguments, the state appeals court gave meaningful consideration to the *Casella* plaintiffs' contentions that *Hall* was controlling precedent. *Casella*, No. 91-1034, LEXIS 14904, at *7-8.

Mission Oaks employs the same rationale regarding the effect of both *Hall* and *Sierra Lake* that the *Casella* plaintiffs did in their argument that *Hall* was controlling precedent. Mission Oaks asserts that Judge Kozinski's statement in *Sierra Lake* regarding state courts' refusal to follow *Hall* validates its argument that Mission Oaks has no adequate opportunity to raise federal claims in state court.

However, as *Casella* noted in its review of the argument, while United States Supreme Court decisions are binding on state courts, federal appeals court decisions are persuasive. not controlling precedent. *Casella*, No. 91-1034, LEXIS 14904, at *10, (citing 9 Witkin, *California Procedure* Appeal § 779 at 750 (3rd ed. 1985)). In rejecting the application of the rationale justifying a physical takings claim to a challenge to a rent control ordinance (i.e., a "regulatory

taking"), the state appeals court distinguished *Hall* from *Loretto*, 458 U.S. 419 (1982), in a reasoned manner. *Casella*, No. 91-1034, LEXIS 14904 at *7-8.

Additionally, as Mission Oaks acknowledged at oral argument, the state court in the present action will be bound by the Supreme Court's decision in a similar challenge to a local rent control ordinance which was recently argued before the Supreme Court. *Yee v. City of Escondido*, 274 Cal. Rptr. 551 (1990), *cert. granted in part*, 112 S.Ct. 294, *and motion to consolidate denied*, 112 S.Ct. 435 (1991), *and argued* Jan. 22, 1992.

Therefore, the Court concludes that the state court proceeding provides Mission Oaks with an adequate forum within which to pursue its federal claims.

Finally, while *Younger* abstention usually does not apply in situations in which the federal plaintiff is also the plaintiff in state court, *Fresh Int'l Corp.*, 805 F.2d at 1360 n.8, the Court here finds *Younger* applicable. Mission Oaks has in effect sought to "shield" itself from unfavorable state court decisions on takings law. *See, Crawley v. Hamilton County Comm'rs*, 744 F.2d 23, 30 (6th Cir. 1984) (*Younger* abstention appropriate where state court plaintiffs "attempting to use federal courts to shield themselves from state court enforcement efforts."). In the

instant case the Court finds that plaintiff has unsuccessfully argued that state court proceedings will not provide an adequate opportunity to raise its federal claims. *Younger* is controlling and the Court abstains from the action.

2. Plaintiff's "Reservation" Not Applicable

A reservation of litigation of federal claims is appropriate in *Pullman* abstention situations where the federal court retains jurisdiction but parties are sent to state court to obtain ruling on a state law question. *England v. Louisiana State Bd. of Medical Examiners* 375 U.S. 411 (1964). *See also* Erwin Chemerinsky, *Federal Jurisdiction* § 12.3 1989 (discussing procedure to be used in *Pullman* abstention and applicability of *England*). The instant case does not present such a situation.

Here, Mission Oaks filed a RESERVATION OF RIGHT TO LITIGATE FEDERAL CLAIMS IN THE UNITED STATES DISTRICT COURT with the state court prior to filing the present federal suit. The Reservation was filed approximately one year after Plaintiff brought suit in state court; after Plaintiff's Motion for Summary Judgment filed in state court and after consideration of the Plaintiff's Writ Petition challenging the Rent Commission's action. Thus the case had proceeded substantially prior to Mission Oaks determining it would file in federal court.

The Court concludes that Mission Oaks' "*England*" Reservation does not control in this situation. Plaintiff had the opportunity to file in federal court prior to filing in state court or at a point in time closer to the initiation of the state proceedings.

IV. CONCLUSION

The Court concludes that abstention on *Younger* grounds is appropriate. Therefore, Defendants' Motion to Dismiss is GRANTED. Plaintiff's claims are DISMISSED.

Good Cause Appearing, IT IS SO ORDERED.

Dated: 3/30/92

/s/ JAMES WARE
JAMES WARE
United States District Judge

APPENDIX E
E-1

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Filed May 7, 1992

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BENITO

MISSION OAKS MOBILEHOME PARK, Plaintiff and Petitioner, v. CITY OF HOLLISTER, and DOES 1 through 100, inclusive, Defendants and Respondents.	) CASE NO. 17362)) STIPULATION AND) ORDER RE: STAY) OF PROCEEDINGS)
MISSION OAKS HOMEOWNERS ASSOCIATION, Defendant/Intervener.	)

IT IS HEREBY STIPULATION by and between Plaintiff, MISSION OAKS MOBILEHOME PARK ("Plaintiff"), Defendant, CITY OF HOLLISTER, ("Defendant") and Intervener MISSION OAKS HOMEOWNERS ASSOCIATION ("Intervener") by and through their respective counsel of record, subject to the approval of the Court, as follows:

1. Defendant's Motion to Stay Trial shall be taken off-calendar and withdrawn and the Parties further stipulate that none of the contentions or arguments set forth in Defendant's Motion to Stay Trial are conceded;

2. The Parties hereby stipulate and agree that this action is stayed until either: (a) conclusion of the appeal in San Benito County Superior Court Case Number 18223, or (b) conclusion of the appeal to the United States Court of Appeal for the Ninth Circuit in the action which proceeded before the United States District Court Northern District of California as Case Number C-91-20733 JW EAI;

3. Plaintiff shall be entitled to terminate the Stay in this action by giving notice to the above-entitled Court and the Parties hereto within thirty (30) days of either: (a) service of the remittitur by the Court of Appeal in San Benito County Superior Court Case Number 18223, or (b) final disposition by the United States Court of

Appeals for the Ninth Circuit in Northern District, Case Number C-91-20733 JW EAI;

4. Plaintiff, at its option, shall be entitled to consolidate the pleadings in San Benito County Superior Court Case Number 18223, with the pleadings in the above-entitled action, subject to the approval of the court;

5. Notwithstanding the foregoing, the Court may for good cause shown, dissolve the stay as it deems appropriate.

Dated: April 22, 1992

HART, KING & COLDREN

By: [JAMES M. TRUSH]
ROBERT S. COLDREN
JAMES M. THRUSH
Attorneys for Plaintiff,
MISSION OAKS
MOBILEHOME PARK

Dated: April 23, 1992

ENDEMAN, LINCOLN,
TUREK & Heater

By: [DONALD R. LINCOLN]
DONALD R. LINCOLN
Attorneys for
Defendant, CITY OF
HOLLISTER

Dated: April 24, 1992

By: [MARK HASEY]
MARK HASEY
Attorney for Defendant/
Intervener MISSION
OAKS HOMEOWNERS
ASSOCIATION

IT IS SO ORDERED

Dated: May 7, 1992

By: [MARK THOMAS]
Judge of the
Superior Court